

EXHIBIT C

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3 - - - - - X

4 UNITED STATES OF AMERICA, :

5 STATE OF ARIZONA, STATE OF :

6 CALIFORNIA, DISTRICT OF :

7 COLUMBIA, STATE OF FLORIDA, :

8 COMMONWEALTH OF :

9 MASSACHUSETTS, COMMONWEALTH :

10 OF PENNSYLVANIA and :

11 COMMONWEALTH OF VIRGINIA, :

12 Plaintiffs, : Case No.

13 v. : 1:21-cv-11558

14 AMERICAN AIRLINES GROUP INC., :

15 and JETBLUE AIRWAYS :

16 CORPORATION, :

17 Defendants. :

18 - - - - - X

19 HIGHLY CONFIDENTIAL

20 Remote Deposition

21 Tuesday, August 23, 2022

22

1 irrelevant to ask the question what does someone
2 think the data say, but I'm looking at what the data
3 is actually saying and that's what I'm using.

4 So I don't want to imply that, you know,
5 there aren't knowledgeable people in American and
6 JetBlue. I'm just saying for the question I'm
7 posing, which is a data question, I can answer it
8 with the data.

9 Q. Is there any information that you asked
10 for or wished that you had had that you didn't have
11 when you were carrying out your assignment?

12 A. Well, I mean, yes and no. When you ask an
13 economist that question, you can always say I wish I
14 had great data and the data were better. Economic
15 data are always subject to not being perfect. But
16 that's just the nature of economic data. And the job
17 of an economist is to use the data that's available
18 to see whether they can answer relevant questions.

19 But, you know, one of the things I should
20 mention is that since I've done my report, like I
21 just said, economists always like more data, the DB1B
22 has published additional -- you know, updated their

1 data to -- and published data for 2022 quarter 1,
2 which was not available at the time my report was
3 done. So that's an example. That's good and I now
4 have a list that is more data. So, you know, more
5 data is always better than less data.

6 Q. Have you done any additional work with
7 that additional quarter of DB1B data?

8 A. Yes. I redid the relevant tables in my
9 report -- I mean, recalculated the relevant tables in
10 my report. Some of the relevant tables.

11 Q. Do you intend to disclose those opinions
12 in a written report? Those updated opinions?

13 A. No one's asked me to, but I'm happy to
14 tell you that it doesn't alter my conclusions and, if
15 anything, confirms them, but --

16 Q. Okay. We'll get to that later.

17 A. Okay.

18 Q. Why don't we take a look at your report.
19 I'm going to ask Jissel to send through the chat,
20 Professor Carlton, your rebuttal report in this case
21 and I'll ask the court reporter to mark it as Exhibit
22 1. But you can refer to the clean copy that you have

1 Q. It might be more helpful actually to look
2 at Professor Miller's reply report. I think I can
3 point you to the text. If you look at paragraph 147
4 of Professor Miller's reply report, it's page 67.

5 A. That's not what I was looking for. I'm
6 sure the number 37 appears. Hold on.

7 MR. WALL: What you just pointed to,
8 Justin, has a reference to a \$37 figure I cited in my
9 initial report.

10 MR. HEIPP: Right. That's what I'm --

11 THE WITNESS: Yes, it is the \$37 figure.
12 Yes. Yes.

13 BY MR. HEIPP:

14 Q. So then, Dr. Carlton, let me direct you up
15 to Exhibit 7 on that same page from Professor
16 Miller's reply report.

17 A. Yep.

18 Q. Do you understand that Exhibit 7 to be
19 conveying that JetBlue actually charges relatively
20 little in ancillary fees relative to other airlines?

21 A. I mean, the exhibit speaks for itself, but
22 that is \$37 that I was citing and that I was

1 remembering and that I think comes from his original
2 report. But I take Exhibit 7 to be contrasting the
3 LCCs and ULCCs and to see how much, you know, they
4 charge. And it does say that JetBlue is number 9.

5 Q. So earlier when you were comparing the \$37
6 to estimates of implied marginal costs, you were
7 using a number that is low relative to other
8 airlines, right?

9 A. Yeah. But I was -- I told you if you go
10 into his data and you ask what is the marginal -- how
11 often is the marginal cost of JetBlue -- yeah, of
12 JetBlue \$37, minus \$37, the answer is -- I can't
13 remember the exact number off the top of my head --
14 but it's somewhere between 10 and 15 percent.

15 So what I'm telling you is there are a lot
16 of examples in his merger simulation where he's
17 getting a number -- when marginal cost is negative,
18 it can't possibly be explained by his ancillary
19 evidence -- by ancillary evidence. That's what I'm
20 saying.

21 Q. Is it true that in Professor Miller's
22 model, the ULCC products are the ones most likely to

1 have negative marginal costs?

2 A. I'd have to check that. But what I just
3 told you is what I remember -- what I remember from
4 asking/inquiring about the relationship between
5 JetBlue's marginal costs and \$37. Now, if I use \$30,
6 I get even more of a problem. But the fact is there
7 are a significant number of problems for JetBlue.

8 Whether there are problems for other
9 airlines, I could go through and try and figure out.
10 But I focused on JetBlue to show you how erroneous
11 his model is. And, in particular, if you have these
12 negative marginal costs, when you simulate the model
13 assuming a merger, you get ridiculous price effects.
14 And that's one cause of his ridiculous price effects
15 when he makes predictions that American Airlines and
16 B6 are going to raise fares by very large amounts.
17 And I go through that in the report.

18 Q. So I asked you whether, in Professor
19 Miller's model, the ULCC products are the ones most
20 likely to have negative marginal costs. Is it
21 correct that your answer is that you don't know
22 sitting here today?

1 A. You know, I don't recall that exact
2 number. It wouldn't surprise me, but, you know, I'd
3 have to -- I'd have to look at that exact question.

4 Q. And compared to other airlines, ULCCs are
5 the ones that are most likely to earn more revenue
6 from ancillary fees, right?

7 A. That's true. But, you know, I do go
8 through in the report some of the peculiar
9 simulations and those are simulations in which he
10 makes predictions about AA and B6 fares going up.
11 And some of the most egregious ones that I think are
12 most unreliable have to do with situations in which
13 either AA or B6 have negative marginal costs.

14 Q. Okay. Dr. Carlton, continuing on in your
15 report, you further criticize Professor Miller for
16 assuming that airlines other than American and
17 JetBlue would not enter the overlap routes.

18 Did I get that right?

19 A. Yeah. Ignoring that possibility, yes.

20 Q. So I first want to clarify some of the
21 terminology here because you refer to both entry and
22 expansion.

1 A. Yes.

2 Q. Is it correct that entry refers to an
3 airline beginning service on a particular O&D route?

4 A. Yes. That's how I generally refine it,
5 yes.

6 Q. And is it correct that expansion refers to
7 an airline adding frequencies or up-gaging on a route
8 that it already serves?

9 A. That's fair, yes.

10 Q. So Professor Miller's model does account
11 for up-gaging; isn't that right?

12 A. No. He simply assumes Bertrand
13 competition with constant returns to scale. So he
14 doesn't recognize any concerns about expansion to
15 assume that there are constant returns to scale.

16 However, let me just be clear. I have to
17 look at his demand model again, but I don't think
18 he's changing frequency in his model, which obviously
19 would be expansion. I think he's holding that fixed.
20 I'd have to go back and check. That's my
21 recollection.

22 So just to clarify, when I say expansion,

1 impact of that event with what Professor Miller
2 predicts?

3 A. I've not studied it, so how -- I'm not
4 sure I particularly see the relevance, but, you know,
5 the report speaks for itself.

6 MR. WALL: Are we about at a point we can
7 take a break here sometime?

8 MR. HEIPP: Yeah, getting pretty close.

9 BY MR. HEIPP:

10 Q. And you haven't attempted to compare other
11 examples of JetBlue entry on routes to what Professor
12 Miller predicts, correct?

13 A. Well, wait. The JetBlue effect which I --
14 my recollection of the JetBlue effect is something
15 like 5 percent, but I'd have to check. But it's
16 nothing like 55 percent. I'm not aware of that.

17 But if you're asking me do I think it's
18 important to look at the JetBlue effect in order to
19 validate my results, I don't see why. What Professor
20 Miller is predicting, very large fare effects, very
21 large relative to what's in the economic literature
22 on merger effects.

1 So I'm having to look at the JetBlue
2 effect and I'd have to look at what happened at DCA.
3 I don't know off the top of my head. But the general
4 JetBlue effect is nothing like 55 percent if I'm
5 remembering the merger correctly. And if that's what
6 you're suggesting that it is, I'll have to go back
7 and look at the literature, but that doesn't square
8 with my recollection.

9 MR. HEIPP: Okay. Let's take a break.

10 THE VIDEOGRAPHER: Off the record at 3:08
11 p.m.

12 (Recess.)

13 THE VIDEOGRAPHER: On the record at 3:29
14 p.m.

15 BY MR. HEIPP:

16 Q. Dr. Carlton, I have just a couple of
17 follow-up questions for you on the conversation that
18 we were having before the break.

19 Is it your testimony that Dr. Miller's
20 predictions of fare increases from the NEA are
21 implausible because they are so large?

22 A. Well, I would say they are very large.

1 They are out of the realm of what prior merger
2 retrospectives have found even when they are -- find
3 on average price increases. If you look at the
4 specifics of where he is postulating large fare
5 increases, oftentimes they correspond to those places
6 where marginal costs in his model are negative, are
7 highly negative.

8 That should make you suspicious of the
9 credibility of his results combined with the fact my
10 recollection is that on some of these routes where he
11 finds very large price/fare increases, if you look at
12 who's increasing the price, it's AA and B6, American
13 Airlines and JetBlue, and the other carrier, say
14 Delta or whoever else the other carrier is, often
15 their fares go up only a little. And that strikes me
16 as a very odd pattern.

17 So combining all of those together does
18 lead me to think that his creative price increases
19 are not credible, combined with the fact that they
20 actually don't occur in the actual data. So for
21 those reasons, I do find his models, his merger
22 simulation to be not a credible way to make

1 predictions, in addition -- for those reasons as well
2 as the fact that I don't think he's modeling the NEA.

3 I should also add, when you asked me about
4 the JetBlue effect, the number of 5 percent or so --
5 and I'd have to check that -- is really the effect of
6 when JetBlue's the second carrier to enter. If it
7 were the first carrier to enter, that's like the
8 first LCC, not the second LCC, the effect of a first
9 LCC I think -- I'd have to look at the data, I mean,
10 the literature. My rough recollection is it's
11 somewhere between, you know, 10 and 20 percent, but
12 I'd have to check.

13 Q. In reaching your opinion about the
14 credibility of Dr. Miller's predictions, did you
15 consider any of the historical examples of fare
16 changes associated with JetBlue entry or exit on a
17 route?

18 A. Not specifically. I mean, you know, I
19 might have read if there was a discussion of them in
20 the expert reports, but I don't think I focused on
21 them in evaluating the reliability of his model. And
22 that, you know, my report speaks for itself as to

1 what I did.

2 Q. Okay. Dr. Carlton, let's change topics.
3 I'd like to ask you about -- it's section 5 of your
4 report, your opinions relating to the American-US
5 Airways merger.

6 A. Okay. Yes.

7 Q. Are you offering the opinion in this case
8 that the American-US Airways merger was
9 procompetitive?

10 A. That is my belief, yes.

11 Q. And what is your basis for that opinion?

12 A. Well, the -- I was the economist for AA-US
13 in the merger investigation and in the subsequent
14 bankruptcy, and I also wrote a paper in 2019 where I
15 discussed that particular merger. So I would say my
16 general conclusion is that the merger I expected to
17 be procompetitive and, if you look at the data of
18 what has happened since the merger occurred, it was
19 procompetitive.

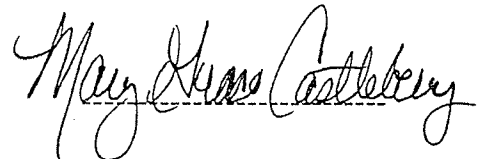
20 Q. When you refer to the data of what has
21 happened since the merger occurred, are you referring
22 to the retrospective analysis that's contained in

CERTIFICATE OF REPORTER

UNITED STATES OF AMERICA) ss.:

STATE OF MARYLAND)

I, **MARY GRACE CASTLEBERRY**, RPR, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties for the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

A handwritten signature in cursive script, reading "Mary Grace Castleberry". The signature is written in dark ink and is positioned above the printed text of the notary's title.

Notary Public in and for

the State of Maryland